

No. 10886

IN THE

United States Circuit Court of Appeals

For the Ninth Circuit

FEDERAL FARM MORTGAGE CORPORATION,
a corporation, APPELLANT,

vs.

HENRY ANDREW PAULSEN, APPELLEE.

APPELLANT'S BRIEF

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JURISDICTION

This appeal is from a decision of the Honorable Frank H. Norcross, Judge of the United States District Court in and for the District of Nevada.

(a) The District Court had original jurisdiction of the bankrupt and the subject matter under Section 75 (a-s) of the National Bankruptcy Act. (Title 11, U.S.C. Section 203 (a-s).

(b) The District Judge had jurisdiction on appellant's Petition for Review, under Section 39 (c) and Section 2 (10) of the National Bankruptcy Act. (Title 11, U.S.C., Sections 67 (c) and 11 (10).

(c) Appellant's Notice of Appeal to this Court was filed on or about August 31, 1944. (TR. 44)

(d) The jurisdiction of this Court is invoked under

Section 24 of the National Bankruptcy Act. (Title 11, U.S.C., Section 47.)

STATEMENT OF THE CASE

Appellant is a secured creditor with a first lien against appellee's real property.

On March 6, 1939, appellee filed his petition under Section 75 of the National Bankruptcy Act. (TR. 2) On May 1, 1939, appellee was adjudicated bankrupt under Section 75(s). (TR. 13)

Appellant's security was appraised at \$3,000.00, and on February 5, 1940, the referee made and entered an order approving the appraisal, setting aside exemptions, retaining the bankrupt in possession of appellant's security, staying proceedings for three years, and fixing rental. (TR. 14-18) On March 25, 1940, the referee's order was "ratified, approved and confirmed" by the District Judge. (TR. 19)

On or about April 2, 1943, appellant filed a Petition and Motion seeking the appointment of a trustee and the liquidation of the bankrupt's estate. (TR. 20-23)

On April 27, 1943, a hearing was held on appellant's Petition and Motion. The referee found that the three-year stay expired on March 25, 1943, "that the bankrupt failed to pay the appraised value into court during the three-year stay or at the end thereof; that the bankrupt failed to ask for a reappraisal of his property during the three-year stay; that the time for liquidation of the bankrupt's estate under the provisions of the National Bankruptcy Act has now arrived," (TR. 31-y) and concluded that a trustee should be appointed and the estate liquidated. It was so ordered. The decision was made at the time of the hearing, and the matter was not taken under submission. However, due to

the difficulty in finding someone who would serve as trustee, the Findings, Conclusions and Order were not signed by the referee until December 22, 1943. (TR. 31-z) On or about September 23, 1943, appellee filed a Petition for Reappraisal. (TR. 24-28) (See TR. 32 for date said petition was filed.)

On March 16, 1944, there was a duly noticed hearing on an order to show cause why the trustee should not abandon the subject property as burdensome. At that time it was agreed that appellee's Petition for Reappraisal might be heard and passed upon by the referee before he decided what action should be taken by the trustee. Thereupon the matter of reappraisal was heard, and the order dated March 16, 1944, was made by the referee granting appellee's Petition for Reappraisal. (TR. 32-32a) Said order was not signed by the referee until March 24, 1944.

On April 3, 1944, appellant filed a petition to review said order. (TR. 32-e—36) (See TR. 38 for date of filing said petition with the referee.)

On May 2, 1944, the referee signed a certificate on petition for review (TR. 38-41) in which he certified two questions to the District Judge, namely:

1. If a bankrupt fails to pay the appraised value into Court and fails to request a reappraisal within three years and a secured creditor requests the appointment of a trustee under the provisions of the last sentence of Section 75 (s) (3), can the bankrupt thereafter secure a reappraisal with the right to redeem under the first proviso under Section 75 (s) (3)?

2. Whether under the circumstances in this case, as set forth by the correspondence attached to the debtor's petition for reappraisal, the Federal Farm Mortgage Corporation is estopped to deny that the bankrupt is entitled to a reappraisal of said property?

On August 21, 1944, the District Judge decided Question No. 1 in the affirmative and Question No. 2 in the negative. (TR. 42-44)

On or about August 31, 1944, appellant filed a notice of appeal dated August 30, 1944, wherein it appealed from the District Judge's holding as to Question No. 1. (TR. 44) No appeal has been taken from the District Judge's holding as to Question No. 2. Therefore, on this appeal the sole question before this Court is whether the District Judge erred in deciding Question No. 1 in the affirmative.

STATEMENT OF POINTS ON APPEAL

Appellant's Statement of Points on Appeal contains a concrete statement of the question in the following language:

"The appellee, who failed to pay the original appraised value into Court during the three-year stay and failed to request a reappraisal until six months after the expiration of the three-year stay and only after the secured creditors petitioned for the appointment of a trustee under the provisions of the last sentence of Section 75(s) (3) of the National Bankruptcy Act, is not legally entitled to have his property reappraised and to redeem under the first proviso of Section 75(s) (3) of the National Bankruptcy Act."

DISTRICT JUDGE'S DECISION

The District Judge expressly found that "*The bankrupt failed to pay the said appraised value during the three-year stay or at the end thereof.*" This finding should certainly have been the basis for deciding Question No. 1 in the negative rather than in the affirmative. Apparently the District Judge decided the question as he did because, as stated by him, the "Bankrupt and his unsecured creditors clearly have an interest in the question of the value at which the real

property might now be appraised." The only explanation for such a conclusion is that the District Judge did not have the full purport of the question in mind. Evidently he had in mind the fact that a trustee had been appointed, and that, therefore, as in general bankruptcy, the value of the bankrupt's estate should be determined before a decision could be made regarding the sale or abandonment of an encumbered asset. Such an appraisal would, of course, not be made under the first proviso of Section 75(s) (3), nor would the fact that the bankrupt and his unsecured creditors may be interested in the value of the property, *for purposes of liquidation*, give the bankrupt the right to redeem under the first proviso of Section 75(s) (3) on a request for reappraisal made six months after the expiration of the three-year stay.

ARGUMENT

I

THE STATUTE PERTAINING TO REAPPRAISAL AND REDEMPTION DOES NOT CONTEMPLATE THAT THE REQUEST FOR REAPPRAISAL MAY BE MADE AFTER THE EXPIRATION OF THE THREE-YEAR STAY OR THAT A REDEMPTION MAY BE MADE THEREAFTER

Section 75(s) (3) reads in part as follows:

"At the end of three years, or prior thereto, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal: *Provided*, That upon request of any secured or unsecured creditor, or upon the request of the debtor, the court shall cause a reappraisal of the debtor's property, or in its discretion set a date for hearing, and after such hearing, fix the value of the property, in accordance with the evidence submitted, and the debtor shall then pay the value so arrived at into court, less payments made on the principal, for distribution to all secured

and unsecured creditors, as their interests may appear, and thereupon the court shall, by an order, turn over full possession and title of said property, free and clear of encumbrances to the debtor."

The bankrupt contends, and the District Judge apparently agreed, that in enacting this emergency legislation and incorporating therein the extraordinary privileges just quoted, Congress did not intend to and did not place any limitation on the time within which such extraordinary privileges must be exercised by the bankrupt. On the other hand appellant contends that "*At the end of three years, or prior thereto*" is a definite and unambiguous three-year period of limitation, and that, unless the appraised value has been paid into court or a request for reappraisal has been made *on or before the last day* of the three-year stay, the bankrupt's extraordinary privileges are lost to him forever.

(a) The Express Provisions of Section 75 Show That
Congress Intended the Rehabilitation Period
Would Be Three Years and No More

Section 75(s) (2) reads in part as follows:

"When the conditions set forth in this section have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of *three years*. *During such three years* the debtor shall be permitted to retain possession of all or any part of his property, . . . provided he pays a reasonable rental semiannually for that part of the property of which he retains possession."*

In this case the Conciliation Commissioner-Referee signed the stay order on February 5, 1940. (TR. 14) The District Judge "ratified, approved and confirmed" the order on March 25, 1940. (TR. 19) Since, according to the defini-

*Throughout brief all emphasis is added to quotations.

tion of "court," as given in Section 1 (9) of the Bankruptcy Act, it includes the judge *and the referee*, it is submitted that the stay order became effective on February 5, 1940, in which case the three-year stay expired on February 5, 1943. However, even if not effective until March 25, 1940, the injunction against "all judicial or official proceedings" automatically ceased on March 25, 1943. In *Hardt v. Kirkpatrick*, 91 F.(2d) 875, this Court held that, without the injunction imposed by the stay order, a sale under a deed of trust is proper. The United States Supreme Court had previously held in *Stratton v. New*, 51 S. Ct. 465, that mere adjudication without an injunction would not prevent the foreclosure of a valid mortgage. After the expiration of the injunction there could be no possible legal grounds upon which a re-appraisal could be granted and the procedure for redemption set in motion, as the extraordinary privileges had then fully expired, and the matter was under the jurisdiction of the court exactly as it would have been had an adjudication under a voluntary petition in general bankruptcy been entered on the day upon which the three-year stay expired. This statement is supported by Subsection (n), which reads in part as follows:

"In proceedings under this section, except as otherwise provided herein, the jurisdiction and powers of the courts, the title, powers and duties of its officers, the duties of the farmer, *and the rights and liabilities of creditors*, and of all persons with respect to the property of the farmer and the jurisdiction of the appellate courts, shall be the same as if a voluntary petition for adjudication had been filed and a decree of adjudication had been entered on the day when the farmer's petition, asking to be adjudged a bankrupt, was filed with the clerk of court or left with the conciliation commissioner for the purpose of forwarding the same to the clerk of court."

In providing that: "At the end of three years, or prior thereto, the debtor may pay into court the amount of the

appraisal . . ." it is inconceivable that Congress referred to any "three years" other than the three years of the stay. And it was not intended that after the injunction became ineffective the bankrupt should still procure the exceptional benefits as against the "rights of creditors" referred to in Subsection (n).

Furthermore, it will be noted that, according to the statute, it is only "during such three years" that the debtor shall be permitted to retain possession of his property. Since his right to possession expressly terminates at the end of the three years, it would be wholly inconsistent with the purpose of the Act to hold that the extraordinary privilege of procuring a reappraisal and redeeming the property by paying the amount thereof into court could be exercised after the right of possession had expired.

It must also be noted that the right of possession is predicated upon the payment of rental for the property "of which he retains possession." There is no question but that the Act would be unconstitutional if it did not provide for the payment of rental during the three-year stay. (See *Home Building and Loan Association v. Blaisdell*, 290 U. S. 398, 54 S. Ct. 231.) It is very evident then that the constitutionality could not be upheld if, six months or indefinitely after the expiration of the three-year stay and after the expiration of the right to possession and after the expiration of the duty to pay rental, the bankrupt might still take advantage of the extraordinary privileges here under consideration.

Apparently the bankrupt construes "At the end of three years" to mean "six months after the end of three years." If a request for reappraisal can legally be granted six months after the end of three years, as contended by the bankrupt, there is no maximum stay period. If six months after the end of the three years comes within the purview of "At the end of three years, or prior thereto," so would one year, or three

years, or five years, or a millennium. Webster defines "end" as follows:

"The extremity or conclusion of any event or series of events; a finality; *as, the end of a year*, or a discourse; also, the concluding events or part of a period or action."

The last sentence of Section 75 (s) (3) reads as follows:

"If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, *or is unable to refinance himself within three years*, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this title."

Here again the statute limits the bankrupt's right to three years, and, if he is "unable to refinance himself within three years," the estate may be liquidated. Section 75 (s) (6) reads as follows:

"This title is hereby declared to be an emergency measure and if in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may shorten the stay or proceedings herein provided for and proceed to liquidate the estate."

The court "may *shorten* the stay of proceedings herein provided for and proceed to *liquidate* the estate." If the court should, under this subsection, shorten the stay to two years and "proceed to liquidate the estate," it seems certain that the bankrupt could not, several months later, procure a reappraisal and redeem at the reappraised value. Section 75 (s) provides for a maximum stay of three years, which may be *shortened* as provided in Section 75 (s) (6), but there is no provision whatsoever under which it may be *lengthened*.

(b) The United States Supreme Court Has Held That
the Stay May Be Three Years or Less But Has
Never Said It Can Be Extended

In *Wright v. Vinton Branch of Mountain Trust Bank*, 300 U. S. 440, 462; 112 A.L.R. 1455; 57 S. Ct. 556, in which the constitutionality of the second Frazier-Lemke Act was upheld, it was said:

"The claim that subsection (s) is unconstitutional rests mainly upon the contention that the Act denies to a mortgagee the 'right to determine when such sale shall be held, subject only to the discretion of the court.' The assertion is that the new Act in effect gives to the mortgagor the absolute right to a *three-year stay*; and that a three year moratorium cannot be justified. The *three-year stay* is specified in the following provisions:

" 'When the conditions set forth in this section (§75) have been complied with, the court shall stay all judicial or official proceedings in any court, or under the direction of any official, against the debtor or any of his property, for a period of *three years*.'

" '*At the end of three years, or prior thereto*, the debtor may pay into court the amount of the appraisal of the property of which he retains possession, including the amount of encumbrances on his exemptions, up to the amount of the appraisal, less the amount paid on principal.'

"Whether, in view of the emergency, an absolute stay of *three years* would have been justified under the bankruptcy power, we have no occasion to decide. There are other provisions in the statute affecting the mortgagor's right to possession. Their phraseology is lacking in clarity. But we are of opinion that, *while the Act affords the debtor, ordinarily, a three-year period of rehabilitation*, the stay provided for is not an absolute one; and that the court may *terminate* the stay and order a sale *earlier*. If we were in doubt as to the intention of Congress, we should still be led to that construction by

a well-settled rule: 'When *the validity* of an act of the Congress is drawn in question, and even if a serious doubt of *constitutionality* is raised, it is a cardinal principle that this Court will first ascertain whether a construction of the statute is fairly possible by which the question may be avoided.' *Crowell v. Benson*, 285 U. S. 22, 62, 76 L.ed. 598, 619, 52 S. Ct. 285.

"The mortgagor's right to retain possession *during the stay* is specifically limited by Paragraph 3, which provides:

" 'If, however, the debtor at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, *or is unable to refinance himself within three years*, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this Act.'

"Thus, for example, *the debtor's tenure under the stay is subject to the requirement that he pay 'a reasonable rental semi-annually for that part of the property of which he retains possession.'* Under the last-quoted provision of Paragraph 3, *if the debtor defaults in this obligation 'at any time,'* the court may thereupon order the property sold. Likewise, the property while in the debtor's possession is kept, according to paragraph 2, at all times 'in the custody and under the supervision and control of the court;'

"Paragraph 3 also provides that 'if . . . the debtor at any time . . . is unable to refinance himself within three years,' the court may close the proceedings by selling the property. This clause must be interpreted as meaning that the court may terminate the stay if after a reasonable time it becomes evident that there is no reasonable hope that the debtor can rehabilitate himself *within the three-year period*. Finally, the intention of Congress to make the stay terminable by the court *within the three years* is shown also by Paragraph 6, which declares the Act an emergency measure, and provides that:

"'If in the judgment of the court such emergency ceases to exist in its locality, then the court, in its discretion, may *shorten* the stay of proceedings herein provided for and proceed to liquidate the estate.'

"Since the language of the Act is not free from doubt in the particulars mentioned, we are justified in seeking enlightenment from reports of Congressional committees and explanations given on the floor of the Senate and House by those in charge of the measure. When the legislative history** of the bill is thus surveyed, it becomes clear that to construe the Act otherwise than as giving the courts broad power to *curtail* the stay for the protection of the mortgagee would be inconsistent not only with the provisions of the Act, but with the committee reports and with the exposition of the bill made in both Houses by its authors and those in charge of the bill and accepted by the Congress without dissent. We construe it as giving the courts such power."

The bankrupt has relied upon *Wright v. Union Central Life Insurance Company*, 311 U. S. 273; 61 S. Ct. 196, 85 L.ed. 184, in support of his contention that he may redeem at any time before or after the end of three years. Said case was before the United States Supreme Court solely for the purpose of determining whether a secured creditor could prevent a redemption under the first proviso of Section 75(s) (3) by requesting and procuring a sale at public auction under the second proviso thereof. It was held that he could not. However, the request for reappraisal was made by Wright during the three years and not after the expiration thereof. He was adjudicated bankrupt under Section 75(s) on October 11, 1935. We do not know the date of the stay order, but under no circumstances could the three-year stay order have been made prior to adjudication, and, therefore, the stay could not have expired before October 11, 1938. The creditor filed a request for sale at public auction on July 22, 1938. The bankrupt requested a reappraisal on

**See infra for express "legislative history."

October 5, 1938, and, therefore, "prior" to the end of the three-year stay. Accordingly, the Wright case is no authority whatsoever for the contention that the reappraisal may be requested and redemption made *after* the three years. Construed most favorably to the bankrupt, the decision can not mean more than that, if the procedure for redemption is set in motion during or at the end of the three years, the bankrupt shall have a reasonable time after the value is fixed within which to pay the money into court.

In the instant case appellant had not requested a sale at public auction under the second proviso of Section 75 (s) (3), as had the creditor in the Wright case. Instead, the procedure set forth in the last sentence of Section 75 (s) (3) for liquidation due to the bankrupt's failure to refinance within three years had been followed. A general meeting of creditors had been noticed and held. The court had found and announced at the hearing that a trustee should be appointed. In the Wright case the creditors had not so proceeded, but, as stated by the court, the creditors nevertheless placed "great reliance on that part of Section 75, sub. s(3), which provides that if the debtor 'at any time fails to comply with the provisions of this section, or with any orders of the court made pursuant to this section, or is unable to refinance himself within three years, the court may order the appointment of a trustee, and order the property sold or otherwise disposed of as provided for in this title.' " The court then said:

"The power of the court to 'order the property sold or otherwise disposed of as provided for in this Act (title)' cannot be taken to mean a discretionary power to terminate the proceedings *through the exclusive device of a public sale*. Congress has provided that certain contumacious conduct on the part of the debtor *or his inability to refinance himself within three years may be an appropriate basis for a termination of the proceedings or for an acceleration thereof . . .* And to hold that the court has the discretion to deny *or to grant* the debtor's

right to redeem at the reappraised value or at the value fixed by the court, *dependent on general equitable considerations*, would be to rewrite the Act, so as to vest in the court a power which Congress did not plainly delegate. *This discretionary power of the court is exhausted when the court terminates the proceedings or accelerates their termination.* Such termination can be effected only pursuant to the precise procedure which Congress has provided."

The Supreme Court held that the power of the court to "order the property sold or otherwise disposed of as provided for in this Act" could not be taken to mean discretionary power to terminate the proceedings "*through the exclusive device of a public sale.*" This meant that the power to "order the property sold or otherwise disposed of as provided for in this Act" did not mean that the only discretionary power thus given to the court was to have the property sold at public auction under the second proviso, as had been requested by the Union Central Life Insurance Company. The Supreme Court recognized, however, that Congress had provided that the debtor's "inability to refinance himself within three years" was "an appropriate basis for a termination of the proceedings or for an acceleration thereof." In the instant case the bankrupt had failed to refinance himself within the three years, and, therefore, the express statutory basis, recognized by the Supreme Court, "for a termination of the proceedings" had arrived. For this reason appellant filed its petition for the appointment of a trustee and the liquidation of the bankrupt's estate, in accordance with the provisions of the last sentence of Section 75(s) (3). It will be noted that the Supreme Court held that the court does not have the discretion to deny or grant the debtor's right to redeem at the appraised value "*dependent on general equitable considerations*" and that "this discretionary power of the court is exhausted when the court terminates the proceedings." Thereby the Supreme Court held that the District Court *had* the discretion to deny or grant the debtor's right to re-

deem at the appraised value, *but not on general equitable considerations*, and also held that the "discretionary power of the court is exhausted when the court terminates the proceedings," and that "*such termination can be effected only pursuant to the precise procedure which Congress has provided.*"

In the instant case appellant followed the *precise* legal procedure, and the order granting the debtor the right to redeem after the three years had expired must have been based on "general equitable considerations" which not only exceeded the "discretionary power of the court" but was made after such discretionary power had been exhausted. The discretionary power had been exhausted because the court had ordered the appointment of a trustee and had ordered him to sell or otherwise dispose of the property. As previously shown, the appointment of the trustee was ordered by the referee at the hearing on appellant's petition therefor, which hearing was held on April 27, 1943, (TR. 31-w) although the order appointing the trustee and ordering him to sell or otherwise dispose of the property was not signed until December 22, 1943. (TR. 31-z) Nevertheless this order, from which there was no review or appeal and which therefore became final, had been in effect more than ninety days before the order granting the bankrupt's petition for re-appraisal was signed. (TR. 32-32-a) After the appointment and qualification of the trustee, and after he had petitioned the court for leave to abandon appellant's security, (see TR. 32 for reference to action of trustee) the extraordinary privileges under the first proviso of Section 75(s)(3) which might otherwise have been granted to the bankrupt had been exhausted. Certain excerpts heretofore quoted from the opinion of the United States Supreme Court in the Wright case make it clear that a bankrupt's extraordinary rights previously referred to are terminated when the stay is terminated.

A recent case, *In re Carter*, 56 Fed. Supp. 385, very carefully analyzed the decision in *Wright v. Union Central Life Insurance Company*, *supra*. It is clear from such analysis that the Wright case has in fact a very limited application.

- (c) The Committee Reports and the Exposition Made in Both Houses When the Present Section 75(s) Was Being Considered Clearly Show that Congress Intended to Limit the Redemption Period to Three Years

The following quotations are conclusive on this point:

Senator Frazier:

"We have left his security intact, but we have made it possible for the bankruptcy court to retain jurisdiction for a period *not to exceed three years*." 79 Cong. Rec. 13831.

Representative Andresen:

"All it does is to give a 3-year extension for the time of the redemption if the court so directs." 79 Cong. Rec. 14332.

Senator Borah:

"This bill is in reality a bankruptcy bill . . . After he has filed his petition to be declared a bankrupt, the property is taken in charge of by the court. *The courts may postpone action with reference to the ultimate disposition of the property for a period of three years*." 79 Cong. Rec. 13632.

Representative Lemke:

"All this bill does is to comply with the decision of the Supreme Court, giving the farmer an opportunity to get a breathing spell after he goes into bankruptcy."

"*The maximum time given him to pay the debt is 3 years*, but the district judge can cut it down to less than

3 years if he finds that the farmer is able to pay in less than that time. It is an emergency act. It is a conservation act.”

“There is nothing in this bill that the United States District Courts are not doing and have not already done under the Bankruptcy Act, except that this gives the farmer the same advantage that the small business man, corporations, and others that go into bankruptcy have—that is, to have his affairs liquidated in an orderly way. *If the farmer can borrow the money within 3 years to pay off what he owes, well and good*; but all of his property must go into the court.” 79 Cong. Rec. 14628.

II

REDEMPTION STATUTES ARE ALWAYS SELF-EXECUTING, AS IS THE RIGHT TO INITIATE REDEMPTION DURING THE THREE-YEAR STAY

The law is replete with redemption periods, such as from foreclosure, execution and tax sales, and with statutes of limitation. All are universally recognized as being self-executing and as completely extinguishing and terminating the redemptioner's rights upon their expiration. In other words, on the last day of the period the right exists but, on the following day, it is *gone forever*. The second proviso of Section 75(s) (3) provides that in case of a sale at public auction, the debtor shall have ninety *days* within which to redeem. There is as much reason to assume that this means ninety *years*, or an indefinite period, as there is to assume that Congress intended the redemption period under the fore part of the same Subsection to be elastic and indefinite.

In the instant case the “three-year moratorium” or “three-year period of rehabilitation”—both quotations from the United States Supreme Court's opinion in *Wright v. Vinton Branch of Mountain Trust Bank*, *supra*,—expired not later than March 25, 1943. From that date, the redemption pro-

cedure not having been set in motion, it was the duty of the court to liquidate the estate as in a general bankruptcy proceeding under a voluntary petition. This statement is definitely supported by Subsection (s) (6), which provides that, if the emergency ceases to exist, the court may "shorten the stay of proceedings herein provided for and *proceed to liquidate the estate.*" This means that after the stay expires, during which the bankrupt has not set in motion the "orderly procedure" which *must* be followed to the letter, as was made so clear by this Court in *Corey v. Blake*, 136 F.(2d) 162, the general bankruptcy procedure should immediately be set in motion by the referee, as indicated by Subsection (n) and by Subsection (3) (6), and the referee should notice a hearing for the appointment of a trustee, and upon his appointment the trustee should proceed to liquidate the estate as in general bankruptcy. It is never the *duty* of a creditor, especially a secured creditor, to take steps leading to the appointment of a trustee and the liquidation of the estate. Therefore, it could not possibly be held that, after the bankrupt's statutory right of redemption has expired, it is resurrected merely because a creditor brings to the attention of the referee his duty to proceed with liquidation. Nor could there be any merit in a contention that, although the statutory period of redemption is three years, a *creditor* can expand the statutory period indefinitely merely by failing to call the referee's attention to his duty.

III

APPELLANT'S CONTENTION HAS BEEN SUSTAINED BY A UNITED STATES DISTRICT COURT

The exact question presented by this review was before the Court *In re Miller*, 48 Fed. Supp. 13. In that case the three-year stay of proceedings under Section 75(s) expired on May 8, 1942, and on July 18, 1942, the secured creditor filed a petition for the appointment of a trustee. Thereafter,

on July 31, 1942, the bankrupt filed with the Conciliation Commissioner a petition for the reappraisal of the real property. The Conciliation Commissioner made an order granting the reappraisal and this order was reviewed. To this extent the facts in the Miller case are identical with the facts in the present case. In the opinion in the Miller case the Court stated the question presented to be, "May the bankrupt have a reappraisal after the three-year limitation period?" The Court, after stating the provisions of Section 75 (s) (3) said:

"It is obvious that the limitation of time may be accelerated. The time may be shortened but it cannot be lengthened. 'A moratorium period not exceeding three years, during which the court's equitable supervision over the land continues,' *Wright v. Union Central Ins. Co.*, 304 U. S. 502, at page 515, 58 S. Ct. 1025, at page 1033, 82 L.Ed. 1490; rights and privileges are fixed.

"To invest the court with power to fix a moratorium not to exceed three years, the Congress did plainly limit the time to three years. The court gave the debtor the full time limit, to compose his debt. The debtor must function within that time, if he does not the Conciliation Commissioner has no power to enlarge the time. This moratorium is a statute of limitation, and the Commissioner's power ended on May 8th, 1942, except to liquidate the bankrupt estate.

"The Congressional committee exposition made in both Houses clearly shows that Congress intended to definitely fix the moratorium period not to exceed three years."

CONCLUSION

It is respectfully submitted that, in enacting this emergency legislation, Congress intended to and did provide for a three-year stay during, or on the final day of, which the bankrupt might exercise certain extraordinary privileges; that Congress did not intend or provide that the extra-

ordinary privileges should or could be exercised after the expiration of the three-year stay; that neither the secured creditors nor the courts have the right to depart from the "orderly procedure" prescribed by the Act and permit a reappraisal and redemption where the bankrupt never pays the appraised value into court and does not ask for a reappraisal until approximately six months after the expiration of the three-year stay.

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